IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

Crl.MC.No. 657 of 2007()

CC.430/2006 of JUDL. MAGI. OF FIRST CLASS-I (FOREST OFFENCES), THODUPUZHA
CRIME NO. 310/05 OF KANJAR POLICE STATION, IDUKKI DIST.

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PETITIONER: ACCUSED.

K.V.JOSEPH @ OUSEPPACHAN , AGED 57 YEARS, S/O.VARKEY,KAVALAKKATTU HOUSE, EDAPPALLY BHAGOM, MUTTAM KARA,MUTTAM VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:

STATE OF KERALA REPRESENTED BY S.H.O., KANJAR POLICE STATION, IDUKKI DISRICT, REP.BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 657 OF 2007

Dated this the 14th day of March, 2007

ORDER

The petitioner faces allegations under Secs.447 and 427 of the IPC. According to the petitioner, the allegations are raised vexatiously with oblique motive. The petitioner's son is practicing in the court where the final report is filed and only to defame the petitioner, such an allegation has been raised. The petitioner further contends that the crux of the dispute is that the petitioner is constructing a building within his property bounded by a compound wall and a neighbour is making a totally baseless and untenable claim.

2. I am satisfied that the grievance of the petitioner deserves to be looked into. But I am not persuaded to agree that the question deserves to be looked into by this Court exercising jurisdiction under Sec.482 of the Cr.P.C. at the first instance. The petitioner must raise his contention before the learned Magistrate. Of course, the offences alleged are all summons offences and the question of discharge may not arise

at all. However, the petitioner has the option of raising the contention that the proceedings are liable to be dropped and discontinued in accordance with Sec.258 of the Cr.P.C. This aspect of the matter was considered in detail by this Court in the decision reported in **Kamala Rajaram v. State of Kerala** (2005 (3) KLT 617). The petitioner can certainly appear before the learned Magistrate and claim discontinuance of proceedings against him.

3. The learned counsel for the petitioner submits that if unnecessary insistence on personal appearance were made by the learned Magistrate, the petitioner would be put to unnecessary hardship. I find no reason why the learned Magistrate should not permit the petitioner to raise this plea under Sec.251 read with Sec.258 of the Cr.P.C. before the learned Magistrate through counsel. The petitioner can be permitted to raise this contention after appearing through counsel. Only if the learned Magistrate takes the view that the proceedings need not be dropped under Sec.258 of the Cr.P.C. need the personal appearance of the petitioner be insisted.

4. It is submitted that a warrant of arrest is pending against the petitioner. The learned Magistrate shall recall the

warrant. The fact that a warrant is pending will not be a sufficient reason to deny the petitioner the benefit of the earlier direction.

5. With the above observations, this Crl.M.C. is dismissed. I make it clear that I expect the learned Magistrate to consider the contention as expeditiously as possible and take an appropriate decision under Sec.258 of the Cr.P.C.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge